



Memorandum # 38/2002

Commonwealth of Massachusetts | Public Employee Retirement Administration Commission

Five Middlesex Avenue, Third Floor, Somerville, MA 02145

Ph 617 666 4446 | Fax 617 628 4002 | TTY 617 591 8917 | www.mass.gov/perac

Robert E. Tierney, *Chairman* | A. Joseph DeNucci, *Vice Chairman*

C. Christopher Alberti | Stephen P. Crosby | Kenneth J. Donnelly | James M. Machado | Donald R. Marquis
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MEMORANDUM

TO: All Retirement Boards

FROM: Joseph E. Connarton, Executive Director

RE: Retiree Contribution Limitations

DATE: October 18, 2002

The Commission's special tax counsel has opined that retirement boards may not accept any retirement contributions from retirees. The Commission sought this opinion from one of the premier law firms focused on public sector employee-benefit tax law due to concerns by members of the retirement community about the issue of the regular compensation status of personal use of employer-supplied vehicles. Counsel determined that IRS Code Section 415(c) limits contributions to a defined benefit (pension) plan to the lesser of \$40,000 or 100% of compensation in a given year. Since retirees have no compensation from their former employers, they may not contribute anything to the pension plan.

As such, all retirement boards shall immediately cease accepting all retirement contributions from retirees for any purposes. It is important to note that this opinion concerns all post-retirement contributions, not just those made as a result of a change in the regular compensation status of the personal use of an employer-supplied vehicle.

Since this opinion does affect the issue of the regular compensation status of the personal use of an employer-supplied vehicle, the Commission will review this issue for retirement boards.

ACTIVE MEMBERS

Retirement boards shall determine, working together with all members and employers of their respective systems, which members have authorized personal use of an employer-supplied vehicle. Each active member must establish the value of the personal use of employer-owned or leased motor vehicle and must pay contributions into the Retirement System for the value of all such personal use. The amount of regular compensation is to be based on the amount of personal use and by using the lease value table supplied with PERAC Memorandum #41/2001 (table enclosed). Whether this personal use is taxable or is exempt from taxation under the federal regulations, members who have personal use must make contributions based on the value of such

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use. Retirement boards must collect contributions for the entire time that such use was authorized. Members will not be required to pay interest on lump sum make-up payments. If the Board allows the make-up payment to be made in installments, interest would accrue. Make-up payments for active members cannot be waived.

RETIRED MEMBERS

Since retired members earned regular compensation for the personal use of the employer-supplied vehicle, retired members are entitled to have their retirement allowances calculated to include this increased regular compensation. Since tax counsel has opined that the IRS Code prohibits payments of retirement contributions after retirement, the Retirement Boards must take the following steps:

- Retirement Boards must immediately cease taking any retirement contributions from retirees.
- Retirement Boards must refund (without interest) all retirement contributions made after retirement as a result of the personal use of an employer-supplied vehicle.
- Retirement Boards must grant the appropriate amount of regular compensation for the personal use of an employer-supplied vehicle despite the lack of retirement contributions and recalculate retirement allowances as necessary.

Although this approach is consistent with Massachusetts law and the methods used to correct errors in private pension plans, the Commission clearly recognizes the difficulty the boards have experienced since first dealing with this issue. We apologize for this difficulty. From the outset, the goal of the Commission was to assure uniformity and fairness in the application of this benefit for all members, both active and retired.

We trust the foregoing is of assistance. If you have further questions or concerns, please contact this office.